

TOWN PLANNING APPEAL APPLICATIONS FOR REVIEW

COUNCIL POLICY

POLICY STATEMENT

Elected Members will represent Council's decision at the State Administrative Tribunal when that decision is contrary to the recommendation of the City's administration.

POLICY SCOPE

The State Administrative Tribunal (SAT) was established in 2005 as an independent body that makes and reviews a range of administrative decisions. Decisions on an Application for Development Approval made by the City Administration and/ or the Council are subject to the State Administrative Tribunal Act 2004 and the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 (Conferral Act). Decisions made by the City Administration and/or the Council can be appealed. They are:

- Decisions made by the Council aligned with the Administration recommendation.
- Decisions made by Council contrary to the Administration recommendation.

This policy will be applied to:

- a. Decisions made by the Council aligned to the Administration recommendation
Where a Council decision is essentially the same as the Administration recommendation, an officer as nominated by the CEO shall act on behalf of the Council and attend a mediation or tribunal hearing to represent the Council's position.
- b. Decisions made by the Council contrary to the Administration recommendation.
Where a decision of the Council is contrary to the recommendation of Administration the Council may be represented by up to two (2) Elected Members that moved and seconded, or by a Consultant. Administration will not be requested to represent the City.

POLICY DETAILS

1. Where a decision of the Council is the subject of a right of review by the SAT and that decision is contrary to the recommendation of Administration the CEO shall arrange for Council to be represented in the following ways:
 - a. The Mover and Seconder of the relevant motion may be responsible for attending as a witness or in any other capacity necessary to a mediation or tribunal hearings and represent the Council's position.
 - b. Where the Mover and/or Seconder are not available an alternative Elected Member supporting the Council's position may act in this capacity.

- c. Where no members of Council are prepared to represent the Council's position at mediation and/or tribunal hearings then the CEO shall appoint an independent consultant acting on the Council's behalf and to attend any mediation and/or tribunal hearings as an expert witness.
 - d. Council officers shall provide all necessary information to the nominated Member of the Council, consultant or advocate assisting in the compilation of a response or a witness statement.
 - e. Council officers, if required, or subpoenaed can give evidence at a tribunal hearing in support of the officers recommendation despite the fact that the evidence given may be contrary to the Council's decision, and the subject of an appeal.
 - f. Class 1 Applications – In accordance with the SAT Act 2004, the Council can receive legal representation only if the applicant chooses to elect that parties be represented by a lawyer.
 - g. Class 2 Applications – In accordance with the SAT Act 2004, the Council may choose to be represented by a legal representative in place of, or in addition to, an independent consultant or advocate.
 - h. Upon receipt of an invitation from the SAT to consider the matter under s31 of the SAT Act 2004, the officer and/or the Council representative shall write a report for Council's reconsideration.
2. For all decisions, legal representation and/ or relevant consultant(s) may be appointed to deal with SAT matters to support the officer or the Council representatives, in accordance with the State Administration Act 2004 and Regulations.
 3. Where legal representation is so engaged, no elected member participating in a SAT hearing shall act contrary to legal advice provided by the Council's appointed lawyer.
 4. Where Elected Members are representing the Council's position at the SAT they are not permitted to discuss the application with any person not directly involved in the SAT process.
 5. Elected Members and employees involved in SAT matters are reminded that they are to adhere to the City of Bunbury Code of Conduct.

COMPLIANCE REQUIREMENTS

LEGISLATION

- *The State Administrative Tribunal established in 2005, as an independent body that makes and reviews a range of administrative decisions. Decisions on development applications made by the City of Bunbury are subject to the State Administrative Tribunal Act 2004, and the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 (Conferral Act).*
- *Planning and Development Act 2005*

INDUSTRY**ORGANISATIONAL**

- *City of Bunbury Town Planning Scheme (as amended)*

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